

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ALONZO K. MORGAN, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 08-12236

DISTRICT JUDGE DAVID M. LAWSON

MAGISTRATE JUDGE DONALD A. SCHEER

MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.,  
CHASE MANHATTAN BANK, AMERICA'S  
SERVING COMPANY, DEUTSCHE  
BANK, BNC MORTGAGE, INC., and  
ALL THEIR AGENTS,

Defendants.

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**REPORT AND RECOMMENDATION**

**RECOMMENDATION:** This action seeking a judgment by this court extinguishing Plaintiffs' home mortgages and restoring their good names and credit rating should be DISMISSED for want of prosecution.

\* \* \*

This matter is before the magistrate judge on Order of Reference for all pretrial matters. The Amended Complaint, filed on May 30, 2008, seeks a judgment by this court extinguishing Plaintiffs' home mortgages and restoring their' good names and credit rating. In the alternative, Plaintiffs pray that defendant Mortgage Electronic Registration Systems, Inc. be ordered to accept Plaintiffs offer of \$235,000.00, and that the court further order that "the foreclosures against subject property be deemed as if they had never happened." On July 15, 2008, the Court dismissed defendants Mortgage Electronic Registration Systems, Inc. and BNC Mortgage, Inc., with prejudice pursuant to the Rooker-Feldman doctrine and res judicata (Docket #10). The case was allowed to proceed against the remaining

defendants. Accordingly, Plaintiff is responsible for service of Summons and Complaint in accordance with the provisions of Fed.R.Civ.P. 4(l).

If a defendant is not served within 120 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time. Fed.R.Civ.P. 4(m). As of the date of this Report and Recommendation, the court's docket reflects no indication that service has been effected.

In view of the foregoing, Plaintiff was ordered on October 6, 2008, to Show Cause, in writing, within thirty (30) days why his Complaint should not be dismissed pursuant to Fed.R.Civ.P. 4(m) for failure to service Summons and Complaint in accordance with Fed.R.Civ.P. 4(l). Plaintiff has not filed a response to the show cause order.

Absent a showing of good cause to justify a failure to effect timely service, the Federal Rules of Civil Procedure compel dismissal. Habib v. General Motors Corporation, 15 F.3d 72, 73 (6<sup>th</sup> Cir. 1994). The Plaintiff bears the burden of establishing good cause. Friedman v. Estate of Presser, 929 F.2d 1151, 1157 (6<sup>th</sup> Cir. 1991). Plaintiff has not satisfied that burden. The remaining defendants remain unserved more than 120 days after the Amended Complaint was filed on May 30, 2008. Pursuant to Fed.R.Civ.P. Rule 4(m), this action should be dismissed for want of prosecution.

Any objections to this Report and Recommendation must be filed with the Court within ten (10) days after it is served, or further appeal from Judge Lawson's acceptance thereof is waived.

s/Donald A. Scheer  
DONALD A. SCHEER  
UNITED STATES MAGISTRATE JUDGE

DATED: December 10, 2008

### **CERTIFICATE OF SERVICE**

I hereby certify on December 10, 2008 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on December 10, 2008: **Alonzo and Donita Morgan.**

s/Michael E. Lang  
Deputy Clerk to  
Magistrate Judge Donald A. Scheer  
(313) 234-5217